

ESTATE OF JOHN C. BRINTON

IBLA 76-291

Decided June 28, 1976

Appeal from decision of the California State Office, Bureau of Land Management, rejecting color of title application CA 2395.

Affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title: Applications

A color of title claim cannot be initiated on federal land which has not been opened to the operation of the public land laws.

2. Act of June 4, 1897--Act of July 6, 1960--Color or Claim of Title: Generally--Lieu Selections--Public Lands: Generally--Public Lands: Disposals of: Generally --Scrip: Generally--Scrip: Special Types of Scrip

Where land had been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

3. Color or Claim of Title: Generally

A state statute which conclusively presumes that in certain circumstances taxes have been paid does not satisfy the Class 2 Color of Title Act requirement that taxes levied on the land have been paid on the land for a period commencing not later

than January 1, 1901, to the date of the application. A tax deed cannot be tacked on to the earlier claim of title. Such a deed commences a new title.

APPEARANCES: M. William Tilden, Esq., Lonergan, Jordan, Gresham, Varner & Savage, San Bernardino, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

The Estate of John C. Brinton has appealed from a decision of the California State Office, Bureau of Land Management, dated September 22, 1975, rejecting color of title application CA 2395.

The State Office rejected appellant's application for the stated reason that, inter alia, it had not been filed on the correct form. 43 CFR 2541.2(a)(1). In addition, the State Office held that appellant had not shown acceptable qualifications and evidence to receive favorable consideration for a Class 2 claim under the Act. Appellant's statement of reasons indicated a willingness to file on the proper forms, but it urged the Board to consider the other issues raised by the decision below. A letter dated February 25, 1976, filed on appellant's behalf, indicated that applications had been filed with the State Office, which is withholding action pending this appeal.

On appeal, appellant requests a decision on the merits of its case, and a finding that it qualifies under either Class 1 or Class 2 requirements, but preferably Class 2.

The Color of Title Act, 43 U.S.C. § 1068 et seq. (1970), recognizes two classes of claims and provides for the transfer of title to not to exceed 160 acres to any qualified applicant. A claim of the type commonly referred to as Class 1 is one in which land has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years and valuable improvements have been placed on the land, or some part of the land has been reduced to cultivation. A claim of Class 2 is one in which land has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, until the date of application, during which time they have paid taxes levied by State and local governmental units.

Appellant seeks patent to the NE 1/4 sec. 31, T. 2 S., R. 1 E., S.B.M., containing 160 acres, and to lot 1 of the same section, containing 41.17 acres, for an aggregate area greater than the statutory limit. The NE 1/4 sec. 31 was the subject of a decision of

the Board, John C. Brinton, 13 IBLA 69 (1973), relating to decedent's application for a quitclaim deed and his color of title claim.

[1, 2] A claim under color of title can be initiated only on federal land subject to the operation of the public land laws. No other category of land is subject to disposition under the Act. Lester J. Hamel, 74 I.D. 125 (1967). Looking at the land status records, we find that the entire township, T. 2 S., R. 1 E., S.B.M., was withdrawn for a forest reserve by Presidential Proclamation dated November 21, 1892. Thereafter, on December 9, 1899, all section 31, and other odd-numbered sections in this and other townships, were patented to the Southern Pacific Railroad pursuant to a grant under the Act of July 27, 1866, 14 Stat. 292. After mesne conveyances, the NE 1/4 sec. 31 was deeded to the United States by one George D. Smith on January 11, 1900, in connection with forest lieu selection application 1810, and lot 1 sec. 31 was similarly deeded by one J. A. Johnston on January 12, 1900, in connection with forest lieu selection application 2078. Neither lieu selection was consummated, each having been canceled in 1903. No further lieu selection rights were ever asserted on the basis of either of these conveyances. 1/ In 1916, T. 2 S., R. 1 E., S.B.M., was eliminated from the national forest.

Prior to the Act of July 6, 1960, Public Law 86-596, 74 Stat. 334, the Secretary of the Interior could have given a quitclaim deed to the successor in interest to an unsuccessful forest lieu selection applicant, pursuant to 43 U.S.C. § 872 (1970). But section 3 of the Act of July 6, 1960, repealed the authority to give a quitclaim deed in forest lieu selection cases, and section 1 of the Act provided that only a monetary consideration could be paid for outstanding land claims, and only if filed with the Secretary of the Interior within 1 year after the date of the Act.

1/ The unexercised forest lieu selection rights were affected by various Acts of Congress in the succeeding years. The Act of March 3, 1905, ch. 1495, 33 Stat. 1264, repealed the statute authorizing relinquishment of land in forests and the selection of other land. The Act of September 22, 1922, ch. 404, 42 Stat. 1017, provided that those who had relinquished land but had not succeeded in selecting other land prior to the Act of March 3, 1905, could select other land or timber, or if no satisfactory exchange could be agreed upon, the title could be quitclaimed to those who had relinquished the land or their heirs or assigns. The Act of August 5, 1955, ch. 575, 69 Stat. 534, required anyone claiming a lieu selection right to present his holdings or claim for recordation by the Department within 2 years. This legislation is explained and summarized in Udall v. Battle Mountain Co., 385 F.2d 90, 92-93 (9th Cir. 1967), cert. denied, 390 U.S. 957 (1968).

The record does not show that the lands have ever been opened 2/ to operation of the public land laws, a requirement which must be met before the lands become subject to such laws, including the Color of Title Act. Cf. Roger L. Moreheart, 4 IBLA 1, 7, 78 I.D. 307, 311 (1971).

[3] Appellant asserts its right to the land from a Tax Deed dated January 8, 1950, from the Treasurer of Riverside County, California. We are not persuaded as to the applicability of section 2195 of the California Revenue and Tax Code, providing that 30 years after any tax becomes a lien not otherwise removed, the lien ceases to exist and the taxes are conclusively presumed to have been paid.

Moreover, it is well settled that a tax deed wipes out the former title to land and initiates a new title. A tax title has nothing to do with the previous chain of title and does not in any way connect itself with it. It is a breaking up of all previous titles, legal or equitable. See W. D. Reams, A-30113 (September 23, 1964). Peaceful adverse possession since 1901 to satisfy a claim under Class 2 of the Act cannot include any time when the ostensible title was held by a political subdivision because of nonpayment of taxes. Id. Furthermore, the requirement of showing payment of taxes since 1901 contemplates positive evidence that taxes actually have been paid, not merely a presumption. Such requirement was imposed to demonstrate bona fides from January 1, 1901, to the date of the filing of the application. The State statutory presumption is not efficacious to establish the bona fides required.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

2/ However, a color of title claim may be initiated on privately-owned land which subsequently becomes public land. Asa V. Perkes, 9 IBLA 363, 367, 80 I.D. 209, 211 (1973).

